

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

~~CONFIDENTIAL~~

TO : The Honorable John W. Dean III
Associate Deputy Attorney General

DATE: May 21, 1969

FROM *MS*: Michael R. Sonnenreich
Deputy Chief Counsel
Bureau of Narcotics and Dangerous Drugs

SUBJECT: Comments regarding the Department's proposed drug
legislation received from Malincrodkt Chemical Company

I have read the comments relating to the new importation provisions and license requirements for manufacturers contained in Schedules I and II of the proposed "Controlled Dangerous Substances Act of 1969." Essentially, they hold nothing new in the way of arguments that have not already been explored in our conversations with the Antitrust Division. As a matter of fact, these are the very same arguments that Donald E. Miller and I raised against the expansion of the importation provisions and the inclusion of a "reasonable prices" criteria.

It should be pointed out that Iran is now legalizing the production of opium and there is no question but that there will be pressure from abroad (Turkey, India, and Iran) to permit importation now that it is authorized. However, since the decision to follow the Antitrust Division recommendations has already been made, I do not see what value there is in further pursuing this point at the Executive Branch level. In my judgment this is one of the "negotiable" points to be worked out during the committee hearings before the Congress.

It is my understanding that a more detailed statement will be forthcoming shortly from the law firm of Steptoe and Johnson, counsel for Melincrodkt Chemical Company. That brief will be carefully reviewed by this Office and we will prepare a response, once the legislation is before the Congress. It is my opinion that the introduction of the proposed legislation should in no way be delayed in anticipation of this brief.

DECLASSIFIED
E.O. 12958, Sect. 3.6

By ARS NARA, Date 9-5-97

CONFIDENTIAL

The Honorable John W. Dean III
Associate Deputy Attorney General

May 21, 1969

Michael R. Sonnenreich
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Memorandum

TO : Mr. John W. Dean, III
Associate Deputy Attorney General

DATE: JUN 9 1969

FROM *MS* Michael R. Sonnenreich
Deputy Chief Counsel
Bureau of Narcotics and Dangerous Drugs

SUBJECT: Congressman Poff's letter to the Attorney General -
May 21, 1969

Having discussed this letter with you in detail over the phone, it is my understanding that many of the problems raised in the letter have already been satisfactorily explained to the Congressman. As to his comments with regards to probation and parole for second and third offenders, I feel that an accommodation can be made except with regard to simple possession.

It is my understanding that you spoke with Congressman Poff and that he has no major complaint with the first offender provisions in the proposal. Further, I believe you have indicated that his comments regarding illegal importation have been answered and he is now more fully cognizable of the type of individual who normally "imports" these drugs.

NOT TRUE ?
Under our existing scheme all second offenders, other than those involved with Schedule IV substances or found guilty of simple possession, cannot have their sentence suspended nor can they be placed on probation or parole. With respect to narcotic drugs listed in Schedules I and II, suspension, probation, and parole rights are withheld regardless of the offense charged. As to all other drugs in Schedules I, II, and III, suspension, probation, and parole rights are withheld only if the violation comes under section 501, which deals with the unlawful distribution, manufacture, importation, and exportation, etc., of these drugs. Imposition of suspension, probation and parole restrictions were not considered useful or equitable with respect to commercial violations such as those enumerated in prohibited Acts B and C, as many of those crimes are considered to be of a lesser danger to the community. With regards to simple possession, it appears that no purpose is served at the Federal level by restricting the court's ability to handle the simple possessors in a flexible way. From the point of view of halting illicit drug traffic, simple possession is the least meaningful enforcement tool in terms of agent time, court time, and the Bureau's overall mission. In

many instances those persons repeatedly caught in possession of dangerous drugs (excluding the professional criminal) are usually less than normal in their social behavior and their ability to function within the society. As to these people, the greatest threat to society lies in their withdrawal from the mainstream of society and their commission of crimes or antisocial behavior while under the influence of drugs. Incarceration without the ability to modify a sentence with respect to these people does not appear to serve a useful enforcement end. As to these people, maximum flexibility in sentencing should be maintained.

As to professional criminals, we can add to section 509 a proviso under (c)(2) that "imposition or execution of such sentence shall not be suspended, probation shall not be granted, and Section 4202 of Title 18 of the United States Code and the Act of July 15, 1932 (47 Stat. 696; D.C. Code 24-201 and following) as amended, shall not apply." This would require the court to sentence the professional criminal in a restrictive manner from the first. Since this is the type of individual the Federal Government is primarily interested in investigating, convicting, and incarcerating, I feel less concern about restricting the court's sentencing alternatives. This means that the professional criminal would have to serve a jail term if convicted. I feel by emphasizing this aspect of the penalty structure the type of person that Congressman Poff is most concerned about will be dealt with severely in the penalty structure without recourse to minimum mandatory sentences and without recourse to a generalized scheme which would work inequities as to other persons caught within the criminal structure of the Act. It should be noted that, should a person be adjudged a professional criminal for illegal sale of narcotics, first offense, his sentence would be not less than 4 years, nor more than 24 years, with a 6 year special parole term and no suspension, probation or parole. This is a tough sentence by any standard.

Mr. John W. Dean, III
Associate Deputy Attorney General

JUN 9 1969

Michael R. Sonnenreich
Deputy Chief Counsel
Bureau of Narcotics and Dangerous Drugs

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RICHARD H. POFF
6TH DISTRICT, VIRGINIA

HOME ADDRESS:
RADFORD, VIRGINIA

ROBERT E. BRADFORD
ADMINISTRATIVE ASSISTANT

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON
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POLICY COMMITTEE

Congress of the United States
House of Representatives

Washington, D.C.

May 21, 1969

Honorable John N. Mitchell
Attorney General
U. S. Department of Justice
Washington, D. C.

Attention of Mr. John W. Dean III

Dear John:

In response to John Dean's request, I submit a few brief comments concerning the proposed Controlled Dangerous Substances Act of 1969.

The objective of reform, revision and recodification in the regulatory field is good.

I like the 4-category apparatus.

By all means, the Attorney General should have initial and final authority with respect to category power and other administrative powers involving the application of good judgment and discretion.

I think the Scientific Advisory Committee function should be emphasized in order to make the reform proposal more salable.

In general, I applaud Titles I, II, III, IV, VI, VII and VIII.

Now my comments take a somewhat different course. I am deeply disturbed about the proposed new penalty structure in Title V. I am disturbed for two reasons: first, because a few items are philosophically objectionable to me; and second, because most of the items will be unacceptable to most of the Members of the House

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Attorney General
U. S. Department of Justice
Washington, D. C.

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May 21, 1969

of Representatives and particularly to those who feel some personal pride of authorship in the statutes on the books. Let me list a few of the proposed changes most likely to provoke resistance:

- 3rd 1st 2nd felony
2-12
- 1) Possession of heroin, second offense, now a minimum mandatory penalty of 5-10 years, would become a misdemeanor with no minimum mandatory features; and suspension and probation would be authorized on second and third offenses;
 - 2) Sale of heroin, suspension and probation would be authorized for the first offense;
 - 3) Sale of heroin to a person under 18 by a person more than 3 years his senior, the minimum mandatory penalty, 10 years to life or death (21 USC 1766) would be repealed; suspension and probation would be authorized;
 - 4) Importation of heroin, suspension and probation would be authorized for the first offense.
- 1st 4-24
Doubtful penalty
2-12

Even more dramatic changes are suggested in connection with marijuana offenses:

- 3rd 1st 2nd felony
0-8
- 1) Possession of marijuana, third offense, the minimum mandatory penalty, 5-20 years, would be repealed; the second offense would become a misdemeanor only; suspension and probation would be authorized for the second and third offenses;
 - 2) Sale of marijuana, first offense, the minimum mandatory penalty, 5-20 years, would be repealed; second offense, the minimum mandatory penalty, 10-40 years, would be repealed; and suspension and probation would be authorized for the first offense;

Honorable John N. Mitchell
Attorney General
U. S. Department of Justice
Washington, D. C.

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May 21, 1969

- dearly*
- 3) Sale of marijuana to a person under 18 by a person 3 years his senior, the minimum mandatory penalty, 10 years to life or death (21 USC 1766), repealed; and suspension and probation would be authorized;
 - 4) Importation of marijuana, first offense, minimum mandatory penalty, 5-20 years, would be repealed; and probation and parole would be authorized on first offense.

With respect to these 8 specific points, I believe I should say that I appreciate the need to treat different dangerous substances differently and the victimized user and the commercial trafficker differently. I approve greater use of carefully supervised parole in prisoner rehabilitation. I am aware that larger fines and more remedial in certain cases than prison sentences. I am also fully conversant with the enlightened arguments against the minimum mandatory sentence: it discourages prosecutors from prosecuting or prompts them to indict for lesser offenses; it discourages juries from convicting; it is therefore often self-defeating. However, the application of the minimum mandatory concept in the narcotics field, at least in certain echelons of defined offenses, is not subject in the same degree to the same frailties. Prosecutors and jurors alike recognize that the crimes of importation and sale justify greater penalties, more certain penalties and penalties more likely to deter. This is especially true for second and subsequent offenses. The use of suspension and probation authority is also productive as a rehabilitation technique in connection with minor offenses and some first offenses; but these proposals extend the authority beyond both.

On the dark side of the Timothy Leary decision, Congress is in no temper to buy this penalty structure. An attempt to make the sale might poison the rest of the reform package. Yes, the present penalty structure is disjointed. However, I would recommend that Congress be asked to use its own judgment in correcting present

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Attorney General
U. S. Department of Justice
Washington, D. C.

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May 21, 1969

penalty conflicts, inconsistencies and inequities. In other words, you could leave the penalty definitions in Title V blank and in the message invite Congress to make its own decisions.

Hoping that these few random thoughts will be helpful, I am

Sincerely,

RICHARD H. POFF

LOUIS B. NICHOLS
BOX 419 RT. 1
LEESBURG, VIRGINIA 22075

file

June 6, 1969

Mr. John W. Dean, III
Associate Deputy Attorney General
U. S. Department of Justice
Washington, D. C. 20530

Dear Mr. Dean:

I regret exceedingly my delay in responding to your letter of May 1 asking for comments on the proposed "Controlled Dangerous Substances Act of 1969." I have been delayed by virtue of travel commitments.

I have now studied the Act and I think this is a great step forward. There will be some resistance until the penalty structure is thoroughly understood. This is strictly in line with the new Minimum Standards for the Administration of Criminal Justice which have been approved by the House of Delegates and the American Bar Association. I am sure you know this is set forth in the report sentencing alternatives.

I have a couple of minor observations. In Section 509 a and b I would insert the words "or his designee" after "Attorney General." The Attorney General cannot begin to pass on all these matters and while he has the inherent authority to delegate, a real narrow construction might proscribe that this had to be a personal function. I think you have some precedence for this in the antitrust laws and if the words "or his designee" are set forth in the statute, then there can be no question.

I would also think that this would be a good opportunity to make a provision whereby a sentencing judge upon presentation of a plan of institutionalized treatment might very well be given the sentencing alternative of prescribing institutionalization until such time as competent medical testimony is presented indicating the success of the therapy.

Mr. John W. Dean, III

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June 6, 1969

I would even be content and happy to see some provision, if we could ever find the wherewithal to provide for the treatment, to sentence all persons addicted to dangerous substances to treatment. I think the rehabilitation is equally important in the sentencing alternative to the deterrent effect, although we must have the deterrent effect. This is something you no doubt have already considered but I am passing it on in the event you haven't.

With best wishes and kind regards.

Sincerely,

Louis B. Nichols
Louis B. Nichols

LEN:js

*I have liked Tomer as I
had some ideas to export but
you were not available. If you
have an interest you can call
at your convenience 703-777-1109*



Mr. John W. Dean, III
Associate Deputy Attorney General
U. S. Department of Justice
Washington, D. C. 20530

SUMMARY OF HEW STAFF VIEWS ON JUSTICE DRAFT BILL,
"CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969"

A. REGULATION AND LICENSING

The bill would expand Justice's mission beyond law enforcement by

- \authorizing Justice to determine medical and scientific questions
- \vesting in Justice (and the Government) excessive control over practice of medicine and medical research
- \giving Justice a role in research and education which could duplicate HEW responsibilities

1. Regulation--general. HEW questions soundness of Reorganization Plan No. 1 of 1968 transferring to Justice regulatory and related scientific functions from HEW and Treasury, contrary to Prettyman Commission which recommended in 1963 organizational distinction between regulation (HEW) and law enforcement (investigation and prosecution--Justice)

The bill would broaden Justice's regulatory authority by

- including not only specified drugs but also to an almost unlimited range of substances which the Attorney General finds to have a "potential for abuse."
- giving the Attorney General authority to add substances to, or reclassify substances among, four schedules based on drug characteristics and abuse levels. The particular schedule would determine the degree of regulatory control (including manufacturing quotas and import and export control), licensure control, and penalties. The bill specifies the factors to consider and findings to be made in categorizing substances, but with one exception all the factors and findings are primarily matters with the special competence of medical, scientific, or public health experts. The Attorney General would not be required to consult HEW, but would have an advisory committee which would include two consultants designated by HEW.

HEW recommends either that (a) the regulatory functions, including licensure, be vested in HEW or (b) that the bill direct the Attorney General to delegate those functions to HEW.

2. Control over medical practice and research. (a) The bill would require every person who manufactures, distributes, or dispenses any covered substance (including Schedule IV over-the-counter drugs) to obtain an annual license from Justice. This would include, among others, physicians, dentists, veterinarians, scientific researchers, pharmacies, and hospitals -- and would include the direct administration of covered substances to a patient--human or animal. Practitioners would be granted a license to dispense substances in Schedules II through IV if they are so authorized to dispense under the law of the State in which they practice. As to Schedule I substances practitioners would be granted a license, with consistency with the public interest as the basic test.

HEW strongly opposes a requirement of Federal licensing of physicians and researchers, let alone by a law enforcement agency. If licensing is required, it should be done by a health agency. HEW would not object to a requirement of registration, as of right, of physicians, researchers, and other practitioners authorized by State law to conduct such research. HEW points out that it now has pervasive control over research on drugs which are not yet approved for market or which are the subject of research to determine safety and effectiveness for use under conditions for which they have not yet been so approved. Additional controls could be added by amendment to the Food and Drug Act.

HEW has no objection to a licensure requirement for manufacturers and commercial distributors of Schedule I or II drugs, but questions the broad discretion given to a law enforcement rather than a health agency in granting or denying a license in the "public interest." It believes that registration is sufficient for other drugs, as is the case now for manufacturers and wholesalers of depressant or stimulant drugs.

3. Manufacturing quotas. Under the bill the Attorney General would determine the total quantity of and production quotas for each Schedule I and II substance, based on U.S. medical, scientific, and industrial needs, export requirements, and reserve stock needs. HEW endorses the Prettyman Commission recommendation that such regulatory functions be in HEW -- or at a minimum HEW believes it should have the responsibility for determining needs for scientific and medical purposes. HEW points out that it now has a similar function with respect to crude opium, cocoa leaves, and their salts, etc.

4. Export and import controls. HEW notes that the Prettyman Commission recommended that these functions with respect to narcotics be vested in HEW and believes that those with respect to non-narcotic drugs should follow whatever decision is made for exports and imports generally in this field.

B. EDUCATION AND RESEARCH

The bill would give Justice a broad charter in research relating to all phases of drug use and abuse -- origins, causes, prediction, prevention, control, correction, and rehabilitation. Justice would also be authorized to carry on programs of education, training, instruction, and information dissemination for the purpose of assisting or improving research.

HEW believes this authority would furnish a potential for largely duplicating the massive educational and research efforts underway or planned in HEW, and recommends that it be deleted or clarified (i.e., narrowed to be incidental to basic functions of Justice under the bill).

C. PENALTIES

HEW believes that, although the penalty provisions fall short of the reforms under consideration by the National Commission on the Reform of Federal Criminal Laws, the bill points in that direction and represents an improvement. However, it suggests a number of changes, including deleting disqualification of recidivists for parole, especially in the case of non-narcotic offenses where parole is now authorized, and making drug addiction a defense in cases of possession of a drug for one's own use.

D. COVERAGE

Because HEW believes the breadth of coverage -- any substance which the Attorney General determines to have a "potential for abuse" (except for distilled spirits, wine, malt beverages and tobacco) -- to be greater than needed, it suggests alternative definitions drawn from the Food and Drug Act and a UN report on psychotropic drugs.

HEW also suggests separate schedules for narcotics and other psychotropic drugs, because their inclusion in the same schedule breaks down in the operative portions of the bill dealing with exports and imports and penalties.

E. TIMELINESS

HEW questions the bill's timeliness with respect to the vast range of psychotropic non-narcotic drugs, since a new multi-lateral treaty on such drugs is in process of development, with control standards that might differ in significant aspects from those of the Single Convention on Narcotic Drugs.

In addition, Justice's summary description of the bill states that "prior to the final passage of this legislation, the Bureau's (Bureau of Narcotics and Dangerous Drugs) scientific experts and its Advisory Committee should review the proposed list [of drugs by Schedule] and adopt a final series of substances to be included" HEW believes it inadvisable to submit a bill to the Congress which does not represent a completed piece of work.

(The bill was originally drafted in 1968 for consideration of the National Commission on Reform of Federal Criminal Laws, which was asked by President Johnson to review the narcotics and drug abuse laws and recommend a balanced and consistent approach to the problem as soon as possible.)

F. OTHER

HEW raises a number of other more technical or specialized issues (see point #7, pp 3-5, in attached HEW summary).

(Prepared by BOB)

LOUIS FREY, JR.
5TH DISTRICT, FLORIDA

COMMITTEES:
SCIENCE AND ASTRONAUTICS
MERCHANT MARINE AND
FISHERIES

Congress of the United States
House of Representatives
Washington, D.C. 20515

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COCOA, FLORIDA 32922

1703 NORTH MAIN STREET
KISSIMMEE, FLORIDA 32741

18 SOUTH MAGNOLIA AVENUE
ORLANDO, FLORIDA 32801

June 13, 1969

The Honorable John Dean
Associate Deputy Attorney General
for Legislation
Department of Justice
Washington, D.C.

Dear Mr. Dean:

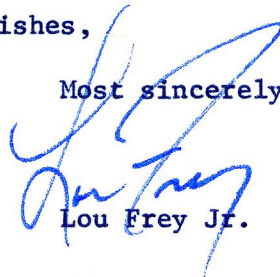
Enclosed is a chart of present narcotic
and dangerous drugs penalty provisions, which
I understand you would be interested in seeing.

In recent weeks, I have been working on
a proposed bill in the area of narcotics and dan-
gerous drugs. This is to be a comprehensive bill
involving changes in penalties and a more direct
line of administration of this field.

I shall be most interested in learning of
the Administration's views in this area, and in
cooperating with you in any way possible.

With best wishes,

Most sincerely,



Lou Frey Jr.

LFjr/eb
Enclosures

RICHARD H. POFF
6TH DISTRICT, VIRGINIA

HOME ADDRESS:
RADFORD, VIRGINIA

JOHN T. WHITE II
ADMINISTRATIVE ASSISTANT

COMMITTEE ON THE JUDICIARY

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Hoping that these few random thoughts will be helpful, I am

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Poff', with a large, sweeping initial 'R' and a horizontal line extending to the right.

RICHARD H. POFF